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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,297	10/23/2003	John M. Cioffi	STFD.060PA (S02-085)	1138
40581 7590 03/24/2009 CRAWFORD MAUNU PLLC 1150 NORTHLAND DRIVE, SUITE 100 ST. PAUL, MN 55120				
EXAMINER LEVITAN, DMITRY				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. CIOFFI
And
AVNEESH AGRAWAL

Application No. 10/692,297
Technology Center 2400

Mailed: March 24, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 10, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

It is unclear what claims are involved in the 35 U.S.C. § 103(a) rejection of claims 1, 3, 4, 6, 7, 10, 15-18, 20, 21, and 23-25, appearing on page 6 of the Examiner's Answer mailed June 2, 2008, because the discussion of this rejection on page 7 includes a statement regarding claim 8.¹ In addition, it is also unclear what claims are involved in the 35 U.S.C. § 103(a) rejection of claims 5, 12, 14 and 22, appearing on page 7 of the Examiner's Answer, because the discussion of this rejection on page 8 includes a statement regarding claim 13.² It is noted that both § 103(a) rejections were copied from the Final Rejection mailed October 11, 2007. Clarification regarding the claims involved in the § 103(a) rejections is required.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

1) for clarification regarding the status of claims 8 and 13:

(a) if the statements regarding claims 8 and 13 were listed in error, provide a PTOL-90 clarifying the record;

¹ Regarding claim 8, Zehavi teaches assigning the additional rate to the user by adding one or more overflow channels 20:35-45.

² Regarding claim 13, Zehavi teaches assigning the variable rate to all users, therefore performing his method until all the users are served and all possible system capacity pool is distributed 3:17-25.

(b) if claims 8 and 13 were inadvertently omitted from the statement of the § 103(a) rejections:

- (i) vacate the Examiner's Answer mailed June 2, 2008;
- (ii) generate a new Examiner's Answer setting forth the correct Grounds of rejection; and
- (iii) correct other sections of the Answer as may be required;

2) if applicable, to include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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